

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 189

July 9, 1998, 10:36 a.m.
Page S-7723 Temp. Record

IRS REFORM/Conference, Passage

SUBJECT: Conference report to accompany the Internal Revenue Service Restructuring and Reform Act of 1998 . . . H.R. 2676. Agreeing to the report.

ACTION: CONFERENCE REPORT AGREED TO, 96-2

SYNOPSIS: The conference report to accompany H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1998, will radically restructure the Internal Revenue Service (IRS) to make it more accountable and responsive to taxpayers' needs, and will enact comprehensive reforms to protect taxpayers from IRS abuses of power. The report will provide \$12.9 billion in tax relief over the next 10 years. Details are provided below.

- The antiquated national, regional, and district IRS structure will be replaced by a structure based on serving similarly situated taxpayers. Instead of being referred to offices based on geography, taxpayers will be served based on whether they are individual taxpayers, small businesses, large businesses, or nonprofit taxpayers.
- An IRS Oversight Board will be created. The board will not have authority to intervene in tax policy decisions or in particular enforcement or personnel decisions. It will be comprised of the IRS Commissioner, Secretary of Treasury, full-time Federal employee or a representative of Federal employees (this board member will be subject to Senate confirmation), and six private-sector members who will be subject to Senate confirmation. The board will sunset September 30, 2008. See vote Nos. 121-124 for related debate.
- The Office of Taxpayer Advocate will be made more independent. Local taxpayer advocates will report directly to the National Taxpayer Advocate, will act independently of IRS examination, collection, and appeals functions, and will maintain separate offices from other IRS offices. The circumstances under which taxpayer assistance orders (orders for the IRS to release property or desist from adverse actions) will be expanded, and taxpayer advocates will take a proactive role to prevent the opportunity for abuses.
- A position of an independent Treasury Inspector General for Tax Administration will be created and the current office of IRS chief inspector will be eliminated. The new inspector general will be subject to Senate confirmation. The inspector general will

(See other side)

YEAS (96)				NAYS (2)		NOT VOTING (2)	
Republican (53 or 100%)		Democrats (43 or 96%)		Republicans (0 or 0%)	Democrats (2 or 4%)	Republicans (2)	Democrats (0)
Abraham	Helms	Akaka	Inouye		Rockefeller	Hutchison- ^{2AY}	
Allard	Hutchinson	Baucus	Johnson		Wellstone	Kyl- ^{2AY}	
Ashcroft	Inhofe	Biden	Kennedy				
Bennett	Jeffords	Bingaman	Kerrey				
Bond	Kempthorne	Boxer	Kerry				
Brownback	Lott	Breaux	Kohl				
Burns	Lugar	Bryan	Landrieu				
Campbell	Mack	Bumpers	Lautenberg				
Chafee	McCain	Byrd	Leahy				
Coats	McConnell	Cleland	Levin				
Cochran	Murkowski	Conrad	Lieberman				
Collins	Nickles	Daschle	Mikulski				
Coverdell	Roberts	Dodd	Moseley-Braun				
Craig	Roth	Dorgan	Moynihan				
D'Amato	Santorum	Durbin	Murray				
DeWine	Sessions	Feingold	Reed				
Domenici	Shelby	Feinstein	Reid				
Enzi	Smith, Bob	Ford	Robb				
Faircloth	Smith, Gordon	Glenn	Sarbanes				
Frist	Snowe	Graham	Torricelli				
Gorton	Specter	Harkin	Wyden				
Gramm	Stevens	Hollings					
Grams	Thomas						
Grassley	Thompson						
Gregg	Thurmond						
Hagel	Warner						
Hatch							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

prepare a semiannual report on taxpayer complaints, IRS employee misconduct allegations, and the status of such complaints.

- It will be unlawful for certain Executive Branch persons (including the President and Vice President and their employees) to conduct or terminate an audit or otherwise to investigate a taxpayer.

- The IRS will be given increased personnel flexibility, including over pay, recruitment, retention, and relocation of employees.
- New performance measures for employees will be developed within 1 year of enactment of this Act.
- The IRS will terminate employees who commit certain offenses (though it will have waiver authority), including: assaulting taxpayers or other IRS employees; failing to obtain the proper authorization before seizing a taxpayer's home; lying under oath; falsifying or destroying documents; violating the Internal Revenue Code; concealing evidence from a congressional inquiry; willfully failing to file income tax returns; threatening an audit for retaliatory purposes; and violating certain provisions of the Civil Rights Act, the Age Discrimination Act, or the Americans with Disabilities Act.

Taxpayer protection and rights provisions include the provisions noted below.

- Innocent spouse relief: innocent spouses will be held liable only for tax attributable to their income (this provision is primarily for divorced women whose former husbands, without their knowledge, cheated on their taxes and cannot be found by the IRS; the IRS currently pursues such women for the full amount owed by their former husbands); relief will not be given if a spouse knew the return was deficient but still willingly signed it; tax relief will be \$393 million in the first 5 years and \$1.013 billion in the second 5 years.

- The accrual of interest and penalties (except for fraud and criminal penalties) will be suspended if the IRS does not provide notice to a taxpayer within 18 months of receiving that taxpayer's return; starting January 1, 2004, the time period will be shortened to 12 months; tax relief will be \$516 million in the first 5 years and \$1.762 billion in relief in the second 5 years.

- The penalty on unpaid balances will be reduced for individuals during periods that those balances are being paid off under installment agreements; tax relief will be \$387 million in the first 5 years and \$838 million in the second 5 years.

- Under certain conditions, if a taxpayer has credible evidence in court proceedings regarding a factual issue regarding his or her income, estate, or gift tax liability, the burden of proof will be on the IRS (under present law, the taxpayer must always prove that the IRS's assertion of liability is wrong); the tax relief will be \$1.035 billion in the first 5 years and \$1.639 billion in the second 5 years.

- Other taxpayer protection provisions: the number of instances in which attorney's fees may be awarded due to unjustified actions by the IRS will be expanded; the statute of limitations on filing returns will be extended during a period when an individual is mentally or physically handicapped; the interest rate differential between the rate taxpayers must pay on underpayments and the rate the IRS must pay on refunds will be eliminated; due process procedures will be enacted; the attorney-client privilege will be extended to accountants and other tax practitioners; financial status audits will be prohibited unless the IRS has a reasonable indication of unreported income; the IRS will implement a supervisory review process for liens, levies, and seizures; the IRS will be required to disclose to taxpayers their rights in an interview, the criteria for examination selection, the appeals and collection process, the reason for a refund denial, and an explanation of joint and several liability; up to \$6 million will be authorized to create low-income taxpayer clinics.

Revenue offsets (to pay for taxpayer right provisions that prevent IRS abuses of power, and thus lower overall collection rates) include the provisions noted below.

- Senior citizens age 70.5 and older will not be penalized by having the required distributions from their Investment Retirement Accounts (IRAs) count as part of their income for purposes of determining whether they exceed the \$100,000 limit on eligibility for converting an IRA into a Roth IRA; this provision will raise funds because converting an IRA requires taxes to be paid up-front. See vote No. 120.

- Mark-to-market treatment will not be allowed for certain trade receivables.

- The "Shmidt Baking" rule with respect to vacation and severance pay will be repealed.

Miscellaneous.

- The holding period for the lower capital gains tax rate will be lowered (for related debate, see vote No. 186).

- Technical corrections will be made to the veterans revenue offset on the highway bill (for related debate, see vote No. 187).

- Electronic filing: the policy of Congress will be to promote having at least 80 percent of returns filed by electronic means by 2007; the time for filing electronically will be extended to March 31; and an alternative to written signatures will be developed.

- Congress: the IRS will report to Congress on sources of complexity in the administration of the tax laws; it is the sense of Congress that the IRS should place a high priority on resolving the year 2000 computing problem (the IRS recently spent \$4 billion on a computer modernization program that failed to work properly); there will be at least 1 annual joint congressional oversight hearing on the IRS; and Congress will prepare a complexity analysis for any legislation containing tax provisions.

- Most-Favored-Nation (MFN) trade status will be renamed "Normal-Trade-Relations" trade status.

- The IRS and the Joint Tax Committee will each prepare studies on certain tax privacy issues.

Those favoring passage contended:

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This effort to reform the IRS goes back to 1995, when the National Commission on Restructuring the IRS was created. The Commission issued its report in June 1997, and legislation was introduced to implement the recommendations in the report. That bill focused mainly on revamping the archaic management structure of the agency. The Finance Committee then began hearings. It held 3 days of hearings in September, at which Members were startled to hear of a number of problems that had been festering for years in the IRS. Taxpayers came forward, as did many members of the IRS (which took great courage, because the likelihood of retaliation from their supervisors was, and is, large), to describe the unjust and illegal tactics taken by the IRS to extort money out of Americans, to seize their assets, and to retaliate against any IRS employee who tried to stop those tactics. The Finance Committee then began the new year with a series of 5 hearings on restructuring, and then held more hearings on IRS oversight. Those additional oversight hearings only deepened Senators' concern over the culture of fear and intimidation that pervades the IRS. Senators also received letters from thousands of taxpayers, all with their own stories of how they had been grossly mistreated. As a result of those hearings and letters, Members added extensive new provisions to the bill to protect taxpayers from abuse by the IRS. The evidence of the need for reform is so overwhelming that these new protections have broad bipartisan support. Democrats initially charged that Republicans were playing politics by holding hearings, but once the testimony on IRS practices was heard that baseless charge totally evaporated.

Though there is no significant disagreement on the need for reforms, a general philosophical difference has emerged during this debate. Those of us who are Democrats wish the bill had provisions to increase IRS enforcement options against people who are not paying their fair share. If we were able to collect that money we would have tens of billions of dollars more to spend on pressing social concerns. Further, it is just not fair that most people pay their taxes but some are getting away with cheating.

To those of us who are Republicans, this argument sounds a bit like the Sheriff of Nottingham whining that some people are managing to hide their money from his IRS-equivalent tax collectors. Tax rates are so high in this country that it was almost inevitable that the IRS would develop as it has. People are just not going to happily give up the large shares of income that are demanded by the Democratic welfare state that has been created. To get the money demanded, the IRS has become like the feared tax collectors of feudal Europe. We are exaggerating, but the point is valid. The more confiscatory the Federal monolith becomes, the less happy people will be in supporting it. Our Democratic colleagues are quite incensed and find it an affront to patriotism that some people are not delighted to pay the huge taxes that they have imposed. Our colleagues' opinion, though, is almost beside the point. Experience has shown, in this country and in every other country, that as tax rates climb compliance rates fall. People start to pay what they consider to be fair instead of what the government says is fair. A high enough tax rate could make criminals of us all. Democrats see resistance to high tax rates as a defect of character on the part of the taxpayers; we suggest that the real defect may be in the politicians who impose those tax rates.

This basic philosophical difference aside, Senators are all supportive of the dozens of specific reforms that are in this conference. Those reforms will provide effective, independent oversight, they will ensure that IRS employees will be held accountable for bad behavior and rewarded for treating taxpayers fairly, they will provide protection to taxpayers from numerous abusive IRS practices that are now legal and common, and they will reform the antiquated management structure of the IRS to make it more efficient and user-friendly.

One out of two Americans say that they would rather be mugged than audited by the IRS. They have very good reason to fear this agency, which has been given immense power without the counterbalance of accountability. This bill will add accountability, which will make a real difference in the lives of tens of millions of honest, hardworking Americans. We enthusiastically support adoption of this conference report.

No arguments were expressed in opposition to passage.